Regarding a pseudo-salesman.

To the Editor:—I have uncovered another racket, which, I believe, through the agency of CALIFORNIA AND WESTERN MEDICINE, can be met.

A man, about three weeks ago, representing himself as manager of this district, in opening up accounts to develop this territory for the "Mastercraft Tailoring Company, Inc.," Durham, North Carolina, solicited me for an order for a suit of clothes. On writing the company I have had my letter returned unclaimed. His scheme is to use an order blank of the company collecting 25 per cent, the balance C. O. D. with order.

I have an idea that this man may still be working in the county, and I would suggest your placing the information in the next issue of CALIFORNIA AND WESTERN MEDICINE, under a prominent "Warning."

This man is about medium height, light complexion, with a harsh rasping voice, going by the name of H. B. May, although he may have other aliases.

I would suggest that any of our membership encountering this man in their offices would report the matter to the police, to pick him up for investigation.

Very truly yours,

CLEON W. SYMONDS, M. D.

July 9, 1935.

Regarding mental patients. A legal opinion by General Counsel Peart.

Subject: Senate Bill No. 534

C. W. Mack, M.D.,
Livermore, California.

Dear Doctor:

Doctor Warnshuis has referred to me your inquiry addressed to him, dated June 14, 1935, concerning the constitutionality of Senate Bill No. 534 should it become law. We have carefully examined the copy of the bill, which you so kindly enclosed, and after an examination of authorities, have reached the following conclusions: It would seem that Senate Bill No. 534 does no more than restate existing principles of constitutional law. Should the bill not be signed by the Governor, the subject-matter with which it deals would continue to be the law of the land, pursuant to the constitutions of the United States and the State of California and judicial decisions thereunder.

As we understand Senate Bill No. 534, it provides first, that no person purportedly mentally deranged may be involuntarily taken to a private sanitarium without a written statement from at least one physician without financial interest in the patient's care; second, that no person mentally ill, residing in a private sanitarium, may be prevented from communicating with friends, relatives and others, except that if in the judgment of the physician in charge it is apparent that the patient is unable to express coherent thoughts, the officials of the sanitarium may prevent outside communication, but must thereafer notify the District Attorney of the county from which the patient came and the District Attorney of the county in which the sanitarium is located; and third, that no court proceedings relative to the mental condition of a patient in a private sanitarium may be had unless the patient is present in person or represented by an attorney. There is also a provision for expert medical examination by court commissioners, which is consistent with the present provisions of the Political Code concerning commitment of insane persons to State institutions.

An analysis of the provisions of the bill, bearing in mind the foregoing outline, leads one to the conclusion that it attempts to prevent involuntary detention without judicial commitment of persons mentally ill unless certain safeguards are complied with. From a legal viewpoint, the detention in a private institution of any individual without the freely given consent of that individual or without a judical declaration by a court of competent jurisdiction providing for such detention, would seem to constitute false imprisonment. Falsely imprisoning a person is a criminal offense (Penal Code, Sections 236-237) and a civil wrong. The person imprisoned may redress the civil wrong in an action for damages.

Furthermore, any act of the legislature purporting to authorize the detention in private institutions of persons mentally ill without any judicial procedure whatever, and without the consent of such persons, would probably be unconstitutional under both the constitutions of the United States (Amendment XIV) and the State of California (Article I, Section 1, and In re Lambert, 134 Cal. 626). Consequently, the legislature in Senate Bill No. 534 is merely regulating this subject in the only manner in which it has constitutional authority, and is only restating that which is already law.

With respect to the third requirement of the bill, namely, that the person whose mental condition is in issue at a court proceeding must be personally present or represented by an attorney, it would seem that this matter is analogous to the question before the Supreme Court of the United States in the famous Scottsboro case, which has received so much newspaper publicity in the past few years. The Supreme Court there held that any proceeding in a state court in which a person's liberty was at stake, the Constitution of the United States required that such person be furnished with an attorney at law.

Of course, it must be remembered that in rendering an opinion on the constitutionality of the bill in which you are interested, matters pertaining to the wisdom or lack of wisdom of the legislature in enacting it are not before me. I must confine myself to the questions of law involved and not undertake to pass judgment upon any of the policies involved.

I am taking the liberty of retaining the copy of Senate Bill No. 534, which you enclosed in your letter to Doctor Warnshuis. If you are caused any inconvenience thereby, I shall return it promptly.

Very truly yours,

June 27, 1935. HARTLEY F. PEART.

Regarding amendments to California Medical Practice Act.

To the Secretary:—In answer to your request of July 1, we submit the following information relative to recent legislative enactments involving changes in the Medical Practice Act.

Senate Bill No. 154, amending Section 14 of the Medical Practice Act, adding causes for issuance of citation and requiring deposit of bond by those appealing from judgment of the Board, was passed and is now before the Governor.

Senate Bill No. 155, amending Section 10 of the Medical Practice Act, re foreign graduates, sent to the Governor June 15, 1935.

Senate Bill No. 468, adding Section 18a, providing for issuance of injunctions to restrain persistent law violators, sent to the Governor June 15, 1935.

Senate Bill No. 820, amending Sections 2 and 13. Amendment to Section 2 returns the annual registration fee of the Board of Medical Examiners to $2. This is the only change that concerns the Board of Medical Examiners. It also increases registration fee payable to the Board of Osteopathic Examiners and increases the penalty for failure to pay same. The amendment to Section 13 does not in any way change the provisions relating to the administration features of the Board of Medical Examiners, excepting that in lieu of the present one-year residence requirement of reciprocity applicants, the applicant may show two years of legal practice in some other state or states. The bill was sent to the Governor June 14, 1935.

Assembly Bill No. 2305, adding Section 9-a to the Medical Practice Act re chiropody, sent to the Governor June 15, 1935.

Assembly Bill No. 1765, while it does not amend the Medical Practice Act, was urgently supported by the Board of Medical Examiners. It amends the corporation law in an endeavor to stop fly-by-night professional schools from issuing "degrees, diplomas or certificates." Sent to the Governor June 15, 1935.

The *Bulletin,* listing all bills passed by the legislature and either signed or vetoed by the Governor during the period January 7 to June 23, 1935, does not show that any of the above-mentioned bills were signed during said period; however, we anticipate their approval by His Excellency.

Trusting this is the information you seek, and if not that you will write us further, believe me

Very cordially yours,

CHARLES B. PINKHAM, M. D.,
Secretary-Treasurer, Board of Medical Examiners.

July 2, 1935.

A. M. A. AND THE HEALTH INSURANCE PRINCIPLE

Below is printed the opening editorial of the July issue of the *Western Hospital Review,* official publication of the Association of Western Hospitals. The editorial was printed in a full-page, two-column display spread, and in line with other quoted articles printed on page 103 of the July issue of CALIFORNIA AND WESTERN MEDICINE, makes interesting reading:

Assembly Bill 246 Becomes a Law

On July 12 the Governor of California signed Assembly Bill 246, an enabling act to permit hospitals to organize and operate nonprofit hospital insurance associations under the jurisdiction and supervision of the Insurance Commissioner.

The proverbial snowball starting down the hillside and ending in an avalanche has its parallel in the rapid development of the idea of applying the principle of insurance to the payment of hospital bills.

To be sure, the idea is not new. Fraternal organizations and certain industries have operated health insurance plans for their members for many years. It is less than five years, however, since Baylor University Hospital in Dallas, Texas, reported to the American Hospital Association convention in Toronto that it was successfully operating a monthly payment hospital insurance plan for employed groups. At last report more than one hundred plans were in operation throughout the United States, and several state legislatures have enacted laws governing the operation of hospital service organizations.

The battlefront of the progressives and reactionaries in medicine is sagging a bit here and there, but in the main has not moved any appreciable distance in so far as any change in the manner of purchasing medical service is concerned. Even the doctor agrees, however, that there can be no valid objection to the patient purchasing hospital care on the budget plan if it interferes in no way with his relationship with the doctor.

California has been much in the limelight during the past months because of many radical proposals emanating from the State, and has been the cause of much caustic comment and barbed criticism from the eastern and midwestern sections of the country. Its State Medical Association shocked and grieved the parent organization, the American Medical Association, by proposing a plan to the legislature whereby the average man could budget for illness. Editorial writers and uninitiated laymen have rudely questioned the motive back of this bill, even going so far as to suggest that it was presented purposely to defeat the avowed intent of providing a plan of compulsory health insurance.

Why not be fair? The California Medical Association, by coming out into the open and accepting the challenge to do something, did more to clarify and expose the dangers of government control of all medical service than anything the American Medical Association has ever done with its "thou shalt nots." One may rest assured, moreover, that if and when any radical change is made in the manner in which medical care is purchased in California, the doctors of the State will have something to say about it.

A. B. 246—NONPROFIT HOSPITAL SERVICE BILL

CHAPTER 386

An act for the regulation and control of corporations organized for the purpose of operating nonprofit hospital service plans.

[Approved by the Governor July 5, A. D. 1935.]

The people of the State of California do enact as follows:

SECTION 1. This act shall govern any nonprofit corporation heretofore or hereafter organized under the laws of the State of California which by its original or by any amended articles is authorized to establish, maintain and operate a nonprofit hospital service plan whereby hospital care may be provided by said corporation to such of the public who become subscribers to said plan under a contract which entitles each subscriber to certain hospital care as provided in said contract, or whereby said hospital care may be provided by any hospital or hospitals with which said nonprofit corporation has or shall have a contract to furnish such hospital care to said subscribers provided that no such corporation operating under the provision of this act shall enter into any such contact with any hospital wholly or partly supported by taxation, except where such a hospital is the only hospital in the county where it is located, or is a hospital maintained and operated by or in connection with a State college or university of the State of California in conjunction with and as a part of its educational and administrative program; and provided further that no corporation authorized by the provisions of this act to establish, maintain and operate a non-profit hospital service plan may itself furnish hospital care to its subscribers or do any of the acts herein authorized, unless and until it shall have first procured a certificate from the State Department of Public Health certifying that it is complying with the standards required by said State Department of Public Health, nor shall any such corporation enter into any contract with any hospital for the furnishing of hospital care to its subscribers unless the hospital with which it contracts has procured such a certificate from the State Department of Public Health.

SEC. 1a. "Hospital care" as used in this act may include any or all of the following services: maintenance and care in hospital, nursing care, drugs, medicines, physiotherapy, transportation, material appliances and their upkeep.

SEC. 2. This act shall not apply to nor govern any corporation operating a hospital service plan on a profit basis, or which, though operating such a plan on a nonprofit basis, shall be organized for or shall conduct any business whatsoever on a profit basis, nor shall it apply to or govern any corporation formed and existing under the Constitution of 1849 pursuant to the act entitled "An act concerning corporations," passed April 22, 1850.

SEC. 3. Any nonprofit corporation organized to operate a nonprofit hospital service plan in the manner and in accordance with the provisions of this act shall be exempt from all other provisions of the insurance laws of this State, unless otherwise specifically designated herein, not only in governmental relations with the State but for every other purpose, and no law hereafter enacted shall apply to such a corporation unless it be expressly designated therein.

SEC. 4. At least two-thirds of the directors of such a corporation which shall furnish hospital care through contracts with hospitals as provided in Section 1 hereof shall be composed equally of duly appointed representatives of such hospitals and duly qualified and licensed practicing physicians holding a valid and unrevoked certificate to practice medicine and surgery or a physician and surgeon certificate, issued under the provisions of the State Medical Practice Act in the State of California. Such a corporation which shall itself furnish such hospital care shall choose its board of directors from such persons as it shall see fit.

SEC. 5. No corporation shall establish, maintain or operate a non-profit hospital service plan as authorized by the provisions of this act unless it shall have first procured the written consent of the Commissioner of Insurance of this State to such establishment, maintenance and operation.

SEC. 6. The rates charged by such corporation to the subscribers for hospital care shall at all times be subject to the approval of the Commissioner of Insurance of the State of California, and all rates of payments to hospitals made by such corporation pursuant to the contracts provided for in Section 1 of this act shall be approved prior to payment by said Commissioner of Insurance.

SEC. 7. Every such corporation shall annually on or before the first day of March file in the office of the Commissioner of Insurance of this State a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December then next preceding, which shall be in such form and shall contain such matters as the Commissioner of Insurance shall prescribe.

SEC. 8. The Commissioner of Insurance, or any deputy or examiner or any other person whom he shall appoint, shall have the power of visitation and examination into the affairs of any such corporation and free access to all the books, papers, and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and may examine the officers, agents or employees of such corporation or any other persons in relation to the affairs, transactions and condition of said corporation.

SEC. 9. All acquisition costs in connection with the solicitation of subscribers to such hospital service plan shall at all times be subject to the approval of the Commissioner of Insurance.

SEC. 10. The funds of any corporation subject to the provisions of this act shall be invested only in securities permitted by the law of this State for the investment of assets of life insurance companies and such securities shall be valued according to the methods used in valuing similar securities held by life insurance companies.

SEC. 11. Any dissolution or liquidation of a corporation subject to the provisions of this act shall be conducted under the supervision of the Commissioner of Insurance who shall have all powers with respect thereto granted to him under the provisions of law with respect to the dissolution and liquidation of insurance companies.